

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Daemon King,)	CASE NO. 1:13 CV 2270
)	
Petitioner,)	JUDGE DONALD C. NUGENT
)	
)	MAGISTRATE JUDGE
)	MCHARGH
v.)	
)	<u>ORDER ADOPTING REPORT</u>
		<u>AND RECOMMENDATION</u>
Bennie Kelly,)	
Warden)	
)	
Respondent.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Kenneth S. McHargh. No objections have been filed. The Report and Recommendation, (ECF #19), issued on June 4, 2014, is hereby ADOPTED. Petitioner's Motion for Summary Judgment is DENIED.

Petitioner filed his motion for summary judgment seeking, in essence, a default judgment. He argued that the Respondent failed to timely respond to the Court's show cause order, although the Respondent did seek extensions of his response time from the Court. The Sixth Circuit has made clear that default judgments are not available in habeas corpus proceedings. *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970). A failure to file a timely Return by the Warden does not relieve Petitioner of his burden of proof. Petitioner still has the burden of proving that he is entitled to habeas relief.

Although there were no objections, this Court has reviewed Magistrate Judge McHargh's

Report and Recommendation *de novo*. See FED. R. CIV. P. 72(b). Following a thorough evaluation of the record, this Court finds that the Report and Recommendation is factually and legally correct. Magistrate Judge McHargh's findings of fact and conclusions of law are hereby ADOPTED. Summary judgment is DENIED.

IT IS SO ORDERED.



DONALD C. NUGENT
United States District Judge

DATED: July 7, 2014